

August 23, 2002

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 150, 150.01, 150.03 and 150.05, Title 14, California Code of Regulations, relating to the Nearshore Fishery Restricted Access Program and gear endorsement regulations, which will appear in the California Regulatory Notice Register on August 23, 2002.

The nearshore fishery restricted access program is being developed to limit participation in the fishery for the permitted nearshore species. In addition to these permitted species, an additional nine species are listed as nearshore (monkeyface prickleback; and black, blue, brown, calico, copper, olive, quillback, and treefish rockfish). Should it become necessary to limit participation in the segment of the nearshore fishery targeting these species, a separate restricted access program would be developed with its own qualifying criteria based on the control dates adopted by the Commission.

Please note the date of the public hearings related to this matter and associated deadlines for receipt of written comments.

Sincerely,

John M. Duffy  
Assistant Executive Director

Attachment

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 7850, 8043, 8046, 8102, 8496, 8587, 8587.1, 8588, 8589.5, 8589.7 and 9025 - 9029.5 of said Code, proposes to amend sections 150, 150.01 and 150.03, and add Section 150.05, Title 14, California Code of Regulations, relating to the nearshore fishery restricted access program.

### **Informative Digest/Policy Statement Overview**

Current regulations establish a Nearshore Fishery Permit for the take of the following nearshore fish species: cabezon, California scorpionfish, California sheephead, kelp and rock greenling, black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish; and a moratorium on the issuance of new permits. For the purpose of developing a restricted access program for this fishery control dates of December 31, 1999 for participation and October 20, 2000 for gear endorsements are also established.

The proposed regulatory changes would establish a restricted access program for the nearshore species listed above. The proposed restricted access program would be individual-based, with transferable and non-transferable permits. The allowable gears would be restricted to line gears unless the permittee qualifies for an endorsement of another gear type. Other proposed regulations would establish methods of transferability, initial application and renewal deadlines, an appeal process for the denial of a permit application, renewal or transfer, and fees for a permit and permit transfers. A permit for incidental take in other fisheries, as well as day or trip limits are also proposed.

The Department has developed options for three or four regional management areas. In the three region option the North Coast Region would extend from the California/Oregon border to Cape Mendocino; the Central Coast Region from Cape Mendocino to [Point Arguello or Point Conception]; and the South Coast Region from [Point Arguello or Point Conception] to the California/Mexico border. The four region option splits the Central Coast Region at Point Año Nuevo into a North-Central Coast Region and a South-Central Coast Region.

The options for a transferable permit in a regional management area require the possession of a 2002-2003 Nearshore Fishery Permit and qualifying landings in that specific regional management area. The proposed qualifying landing period is January 1, 1994 through December 31, 1999. Options for additional qualifying criteria include number of years with a minimum level of landings (ranging from 100 to 1,000 pounds of nearshore landings in each of 1 to 3 years), the value of qualifying landings calculated

as a minimum average price per pound (ranging from \$0.01 to \$3.50 per pound), recent participation in the fishery (at least one landing in either 2000 or 2001), and years of participation (ranging from 1 to 6 years with at least one nearshore landing).

The proposed non-transferable permit in a management area requires that the fisherman have been a licensed commercial fisherman in California for 20 years and have qualifying landings in that specific management area in either any one of those license years or one of the years between 1994 and 1999.

A range of capacity goals (the desired number of permits) is proposed for each management area for transferable permits. The non-transferable permits satisfy the provisions of Fish and Game Code Section 8101 (grandfather clause) and contribute to attrition.

- North Coast Region: 4-14 transferable permits
- Central Coast Region: 9-40 transferable permits
- South Coast Region: 5-45 transferable permits

Under the four region option the proposed capacity goals are:

- North Coast Region: 4-14 transferable permits
- North-Central Coast Region: 3-15 transferable permits
- South-Central Coast Region: 6-25 transferable permits
- South Coast Region: 5-45 transferable permits

There are two proposed options for transferability. Under the moratorium option no permits could be transferred for the first two years of the program. If, after two years, the number of permits in any regional management area still exceeds the capacity goal, a permit transfer system would be utilized. A permit transfer system requires a person to purchase two or three permits, retiring all but one which the person receives. If the person wants to fish with trap or trawl gear, at least one of the permits purchased has to have the appropriate gear endorsement. When the number of permits drops below the capacity goal in any region, the individual with an active, non-transferable Nearshore Fishery Permit and the greatest number of landings in the 6 year qualifying period would receive a permit and his non-transferable permit would be retired. When all non-transferable permits in a region are retired, permit transfers would be allowed to any qualified fisherman.

The proposed regulations would permit the estate of a deceased permittee to apply, via notarized letter within one year of the permittee's death, to keep the Nearshore Fishery Permit only for the purpose of transferring the permit. The provisions of transferability as described above would apply to these transfers also. It is proposed that transfer of the permit to a partner or immediate family member would not require the purchase of multiple permits.

This program proposes limiting the allowable gear to hook-and-line gear. The use of traps or trawl gear would require a gear endorsement attached to the permit. Qualifying

criteria for a trap endorsement includes possession of a general trap permit or finfish trap permit and may include other criteria such as the majority of landings were made with trap gear or years with a minimum level of landings, the value of landings, recent participation in the fishery, and years of participation. Qualifying criteria for a trawl endorsement include that the majority of landings were made with trawl gear.

Regional Nearshore Fishery Permits are proposed to be renewed annually. For transferable Nearshore Fishery Permits the proposed range of fees is from \$125 to \$1200. The proposed fee for non-transferable Nearshore Fishery Permits is from \$125 to \$1200. Proposed transfer fees range from \$250 to \$1000. The proposed fee for a gear endorsement or transfer of a gear endorsement ranges from \$30 to \$75. The proposed fee for a Nearshore Fishery Bycatch Permit ranges from \$50 to \$250.

Under the proposed regulations, applications for initial issuance of a Nearshore Fishery Permit must be received by the Department, or, if mailed, postmarked, on or before June 30, 2003. Applications for initial issuance of a Nearshore Fishery Permit received July 1 through July 31, 2003 shall be considered late and will be assessed a \$50 late fee. Applications received after July 31, 2003 will not be considered.

Under the proposed regulations, applications for renewal of a Nearshore Fishery Permit must be received by the Department, or, if mailed, postmarked, on or before April 30 of each year. Applications for permit renewal of a Nearshore Fishery Permit received May 1 through May 31 shall be considered late and will be assessed a \$50 late fee. Applications received after May 31 not be considered, and the permit shall be cancelled and shall no longer be eligible for renewal in subsequent years.

The proposed nearshore fishery permit shall be revoked: a) if the person fails to renew the permit annually or renew his or her commercial fishing license issued pursuant to Fish and Game Code Section 7852; or b) for violation of any fish and game regulation pertaining to the take of nearshore species or violation of the terms or conditions of the permit.

The proposed regulations would provide that any applicant who is denied initial issuance, renewal, or transfer of a nearshore fishery permit or gear endorsement may appeal that denial to the Department in writing describing the basis for the appeal. If the Department denies the appeal, an appeal may be made to the Commission.

The regulations propose that at least one Nearshore Fishery Permit holder shall be on board the vessel when taking, possessing or landing nearshore fish stocks. If a support vessel is used, one permit holder shall be on each vessel.

The proposed regulations would provide that no person may take or land nearshore fish stocks on board a boat without either a Nearshore Fishery Permit or Nearshore Fishery Bycatch Permit. Eligibility for a Nearshore Fishery Bycatch Permit would require possession of a 2002-2003 Nearshore Fishery Permit, and that the person is not

eligible, based on the qualifying criteria, for a 2003-2004 Nearshore Fishery Permit or is eligible but unwilling to convert to the allowable gear. It is proposed that only gear allowed under the Nearshore Fishery Bycatch Permit would be trawl or gill nets. Additionally, day or trip limits ranging from 1 to 100 pounds have been proposed.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Elihu Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, on Thursday, August 29, 2002 at 9:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Board of Supervisors Chambers, 981 "H" Street, Suite 100, Crescent City, California, on Friday, October 25, 2002 at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS FURTHER GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Monterey Beach Resort Hotel, 2600 Sand Dunes Drive and Highway 1, Monterey, California, on Friday, December 6, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 29, 2002 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than December 6, 2002, at the hearing in Monterey, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Traci Bishop, Department of Fish and Game, phone (562) 342-7111, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action may have a significant statewide adverse economic impact on businesses, including the ability of California business to compete with businesses in other states. Each permittee, buyer and processor is considered a small business. The proposed nearshore restricted access program would cause some fishermen who have participated in the past on a limited or sporadic level to lose some potential income. Based on year 2000 commercial fish landings, the proposed regulations could have a negative economic impact of \$562,963 to \$3,536,961 (expressed in year 2001 dollars) depending on the options chosen. These projections take into account the effect of the commercial landings as they move through the local economies, causing a ripple effect in output demand.

The Commission has made an initial determination that the adoption and amendment of these regulations may have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or
- (iv) exemption or partial exemption from the regulatory requirements for business.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action is expected to eliminate some jobs in commercial fishing.

- (c) Cost Impacts on a Representative Private Person or Business:

The proposed nearshore restricted access program would cause some fishermen who have participated in the past on a limited or sporadic level to lose some potential income.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy  
Assistant Executive Director

August 13, 2002